

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:09-CV-89-H

CAMILLA THOMPSON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	ORDER
)	
BANK OF AMERICA, <u>et al.</u> ,)	
)	
Defendants.)	

This matter is before the court on a motion to dismiss filed by defendant Berthadale R. Best ("Best") [DE #61]. Best argues that plaintiffs' claims against her should be dismissed without prejudice pursuant to Rules 4(m), 12(b)(2) and 12(b)(5) of the Federal Rules of Civil Procedure for failure to effect service. Subsequent to the filing of Best's motion to dismiss, plaintiffs moved to extend the time to serve a number of defendants, including Best. (See Mot. Ext. Time [DE #63].) On September 23, 2010, United States Magistrate Judge James E. Gates entered an order finding insufficient cause to extend the time for serving Best and denying plaintiffs' motion for an extension of time to serve Best.

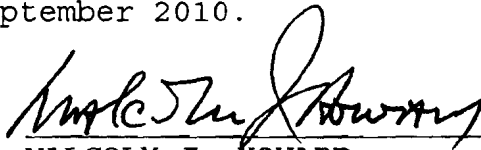
Rule 4(m) provides, in pertinent part:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that

defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Plaintiffs did not serve Best within 120 days of the filing of their complaint, and the court has denied plaintiffs' request for an extension of time within which to serve Best. Accordingly, Best's motion to dismiss [DE #61] is GRANTED, and plaintiffs' claims against Best are DISMISSED without prejudice.

This 30th day of September 2010.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", written over a horizontal line.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC
#31